

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

KEVIN J BAUMLER
305 N VINE ST
WEST UNION IA 52175

AMERICAN EXPRESS
FINANCIAL ADVISORS
c/o DARYL KRUSE
115 S VINE ST
WEST UNION IA 52175

Appeal Number: 04A-UI-00209-DWT
OC 08/24/03 R 04
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Kevin J. Baumler (claimant) appealed a representative's December 29, 2003 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of American Express Financial Advisors (employer) would not be charged because the claimant had voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 30, 2004. The claimant participated in the hearing. Daryl Kruse, a certified trainer, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant and employer initially talked about the claimant working for the employer in March 2003. The claimant understood he could not start working until he passed some tests. After the claimant passed the necessary tests, he began working for the employer on June 30, 2003.

In March 2003 when the employer talked to the claimant about the job, there was no discussion as to how often the claimant would be paid. The claimant incorrectly assumed the remodeling job the employer talked about so the claimant could have his own office would be done shortly after he began working for the employer. When the claimant agreed to work for the employer, he understood and accepted employment as an employee, not as an independent contractor.

After the claimant began working, the employer had not even started the remodeling job. When the claimant talked to Kruse about the remodeling project, Kruse acknowledged he needed to get it done but would not accept the claimant's offer to do any of the work. The claimant understood he would receive two days each week of training from Kruse. During the time the claimant worked, Kruse provided seven days of training to the claimant.

In mid-August, the claimant asked Kruse to pay him. Prior to this time, the employer had not paid the claimant anything. When the claimant received his paycheck, the employer had not deducted any taxes or anything else from the paycheck. When the claimant asked the employer about this, the employer indicated being paid as an independent contractor would be better for the claimant so he could deduct his expenses.

After the employer indicated the claimant was considered an independent contractor instead of an employee, the claimant quit. The claimant's last day of work was August 23 or 26, 2003.

The Department investigated and determined the claimant was an employee and not an independent contractor. The employer did not appeal that decision.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code §96.5-1. The claimant voluntarily quit his employment when he resigned. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code §96.6-2. The law presumes a claimant has good cause to quit when there has been a substantial change in the employment relationship. 871 24.26(1).

The facts indicate there were many topics that were not discussed by either the claimant or the employer in March 2003 when the claimant interviewed for the job. Both parties made incorrect assumptions. Even though Krause considered the claimant an independent contractor, the claimant believed he would be hired as an employee. Even if the claimant had not been told he would be working as an employee, he had no reason to believe he would not be treated as an employee unless the employer specifically told the claimant he would be working as an independent contractor. The employer did not do this. The first time the claimant had any knowledge the employer considered him an independent contract instead of an employee was

in mid August when the employer paid him. At this point, the employer substantially changed the employment relationship. Based on just this factor, the claimant established good cause for quitting and is qualified to receive unemployment insurance benefits as of August 24, 2003.

The employer is not one of the claimant's base period employers. Therefore, during the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's December 29, 2003 decision (reference 01) is reversed. The claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits. As of August 24, 2003, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

dlw/s